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MONITORING THE IMPLEMENTATION OF THE NAIROBI FORWARD-LOOKING STRATEGIES FOR THE ADVANCEMENT OF WOMEN: OTHER ISSUES

Elaboration of a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Report of the Secretary-General

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INTRODUCTION

1. The Economic and Social Council, in its resolution 1995/29 of 24 July 1995, requested the Secretary-General to invite Governments and intergovernmental and non-governmental organizations to submit their views on an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women, including their views on feasibility, taking into account the elements suggested by the Committee on the Elimination of Discrimination against Women in suggestion 7, adopted at its fourteenth session. 1/ The resolution further requested the Secretary-General to submit to the Commission on the Status of Women at its fortieth session - if possible, six weeks prior to the commencement of the session - a comprehensive report, including a synthesis, on the views expressed. The Council decided that the Commission should establish an in-session open-ended working group for a two-week period at its fortieth session to consider the report requested of the Secretary-General with a view to elaborating a draft optional protocol to the Convention. The present report is submitted in accordance with those requests.

I. BACKGROUND

2. The adoption in 1979 of the Convention on the Elimination of All Forms of Discrimination against Women by the General Assembly (resolution 34/180) concluded a period of six years of negotiations and drafting in the Commission on the Status of Women and the Third Committee of the General Assembly. During that period, little attention was given to the possibility of introducing a right of petition, or individual complaints procedure, under the Convention, to supplement the reporting requirements established for States parties. 2/

3. An expert group meeting on violence against women was convened by the Division for the Advancement of Women, Department for Policy Coordination and Sustainable Development of the United Nations Secretariat, from 11 to 15 November 1991 in response to Economic and Social Council resolution 1991/18, on violence against women in all its forms. The experts recommended, inter alia, the consideration of an optional protocol, or protocols, to the Convention, which would be open to ratification or accession by States parties to the Convention (E/CN.6/1992/4).

4. The question of the elaboration of an optional protocol under the Convention was subsequently raised in 1992 in the Committee on the Elimination of Discrimination against Women, in conjunction with the Committee's discussion on the question of violence against women. At that time, the Committee was of the view that a procedural optional protocol could be considered at a future time as an instrument to strengthen the Convention. 3/ In its suggestion 4, addressed to the World Conference on Human Rights, the Committee, inter alia, recommended, with a view to placing the Convention on the same footing as other human rights conventions, that "a study should be prepared on the feasibility of drafting optional protocols". 4/

5. The World Conference on Human Rights recommended that "new procedures should also be adopted to strengthen implementation of the commitment to women's

equality and the human rights of women. The Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women should quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women". 5/

6. In response to that recommendation, the Committee, at its thirteenth session, in 1994, adopted suggestion 5, in which it proposed that the Commission request the Secretary-General to convene an expert group meeting to prepare a draft optional protocol to the Convention, providing for a complaints procedure. The report of such a meeting should be presented first to the Committee for its comments and then to the Commission for action. 6/

7. In response to the proposal of the Commission, the Economic and Social Council adopted resolution 1994/7, in which it decided "that the Commission on the Status of Women shall examine at its thirty-ninth session, in cooperation with the Committee and taking into account the results of any governmental expert meeting on this question that may be convened prior to that session, the feasibility of introducing the right of petition through the preparation of an optional protocol to the Convention".

8. Although a governmental expert group meeting was not convened prior to the fourteenth session of the Committee, one of the Committee's experts prepared a note on the issue which was presented to the Committee. The note included a draft of an optional protocol which had been prepared by a meeting convened in Maastricht, Netherlands, 29 September-1 October 1994, in which three members of the Committee had participated. After an extensive discussion at its fourteenth session of the question of an optional protocol, the Committee adopted suggestion 7, containing elements for an optional protocol. The Council took note of suggestion 7 in its resolution 1995/29.

9. The Platform for Action, adopted at the Fourth World Conference on Women, requested Governments to "support the process initiated by the Commission on the Status of Women with a view to elaborating a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women that could enter into force as soon as possible on a right of petition procedure, taking into consideration the Secretary-General's report on the optional protocol, including those views related to its feasibility". 7/

10. At present, three of the major international human rights treaties currently in force have complaints procedures, giving their supervisory bodies authority to receive and consider communications. Article 1 of the First Optional Protocol of the International Covenant on Civil and Political Rights establishes the competence of the Human Rights Committee "to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by [that] State party of any of the rights set forth in the Covenant". 8/ Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination establishes the competence of the Committee "to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by [a] State party of any of the rights set forth in this Convention". 9/ Article 22 of the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment establishes the competence of the Committee against Torture "to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention". 10/ The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which has not yet entered into force, also provides for a communications procedure in its article 77, which establishes the competence of the Committee "to receive and consider communications from or on behalf of individuals subject to [a State party's] jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State party". 11/

11. The Committee on Economic, Social and Cultural Rights, established under the International Covenant on Economic, Social and Cultural Rights, has since its fifth session been considering the preparation of an optional protocol and its principal characteristics under that Covenant which would aim at introducing a complaints procedure. To that end, the Committee submitted a consolidated analytical paper to the World Conference on Human Rights (A/CONF.157/PC/62/Add.5). A further report on the matter was submitted by one of the Committee's experts to the Committee at its eleventh session, analysing the possible provisions of an optional protocol under the Covenant and offering a draft for such a protocol (E/C.12/1994/12). The report takes into account the discussions held in the Committee, as reflected in the Committee's report to the Conference, and work done with regard to an optional protocol under the Convention on the Elimination of All Forms of Discrimination against Women. It also draws from existing communications procedures under United Nations human rights treaties, particularly the first optional protocol to the International Covenant on Civil and Political Rights.

12. The Commission on the Status of Women has a mandate for considering confidential and non-confidential communications on the status of women. In accordance with that mandate, set forth in Economic and Social Council resolution 1993/11, the Commission is empowered to make recommendations to the Council on what action should be taken on emerging trends and patterns of discrimination against women revealed by such communications.

13. The Economic and Social Council, in its resolution 1503 (XLVIII) of 27 May 1970, adopted a procedure for dealing with communications relating to violations of human rights and fundamental freedoms. The "1503 procedure" addresses cases in which there seems to be reliable evidence of a consistent pattern of gross violations of human rights and fundamental freedoms.

14. In accordance with Council resolution 1995/29, the Secretary-General addressed a note verbale, dated 14 August 1995, to Member States, drawing their attention to the resolution and inviting them to submit the requested information to the Secretariat no later than 15 November. Subsequently, a second note verbale, dated 20 November 1995, was sent out in which the Secretary-General informed delegations that, in view of time constraints, the deadline for submission of comments was extended to 1 December 1995. The note informed delegations that comments received after that date could not be processed in the report of the Secretary-General.

15. A total of 14 responses was received in response to the two notes verbales, from the following Member States: Australia, Austria, Liechtenstein, Netherlands, Germany, Finland, New Zealand, Turkey, Mexico, Peru, Colombia, Ecuador, Norway, and Ukraine.

16. The following 19 non-governmental organizations also submitted comments: International Human Rights Law Group, Dutch section of the International Commission of Jurists (NCJM), Women for Women's Human Rights, Japan Christian Women's Temperance Union, Change, Human Rights Watch, Japanese Association of International Women's Rights, Japan Federation of Bar Associations, Norsk Folkehjelp, Forum for Women and Development, CLADEM, Asian Women's Human Rights Council, Caribbean Association for Feminist Research and Action, International Women's Human Rights Law Clinic, Center for Women's Global Leadership, New Zealand Human Rights Commission, Foundation for Women, Ain O Salish Kendra, Danish Women's Society.

17. In accordance with the request contained in Council resolution 1995/29, the present report first gives a synopsis of the replies; it then reflects comprehensively the views and comments received from Governments and summarizes the comments received from non-governmental organizations, in accordance with suggestion 7. General comments regarding the introduction of a right of petition under the Convention are reflected first and are organized in accordance with the major points addressed.

II. SYNOPSIS OF REPLIES RECEIVED

18. All replies addressed the question of the introduction of a right of petition through an optional protocol to the Convention. The overwhelming majority of comments expressed support for the process initiated by the Commission and the Economic and Social Council. Support was also expressed specifically for an optional protocol, particularly in the framework of related action taken at the World Conference on Human Rights and the Fourth World Conference on Women. The Committee's suggestion 7 on the issue was commended and seen as an important basis for initiating the preparatory work on a protocol. Reasons for support were expressed.

19. A number of Member States submitted their preliminary views as input for further discussion during the fortieth session of the Commission on the Status of Women. Several Member States identified issues and questions which, in their view, needed further clarification and elaboration or which might constitute problems in, or hinder, the elaboration of an optional protocol. It was noted that the possible development of an optional protocol warranted careful consideration. Member States expressed their expectation for constructive discussions and negotiations on it during the upcoming session of the Commission.

20. Several submissions addressed the question of the relationship between an optional protocol to the Convention and other existing procedures, including those under other international human rights instruments. While some noted that a complaints procedure would put the Convention on an equal footing with other instruments and welcomed the innovative character of the proposed inquiry

procedure, others saw a need for further discussion of the complementarity and normative consistency between the proposed optional protocol and other existing procedures, including the communications procedure of the Commission on the Status of Women. The questions of overall streamlining and avoidance of duplication and of mainstreaming women's human rights in other human rights mechanisms were raised, as was the question of whether existing instruments and procedures were able effectively to address violations of the human rights of women.

21. A number of comments addressed the question of the nature of the rights contained in the Convention and their justiciability. In that regard, several categories of obligations of States parties arising from the provisions of the Convention were identified, and the programmatic nature of obligations was noted. It was noted that the nature of the provisions of the Convention might have a bearing on the type of mechanisms and remedies that are proposed. The question of the impact of the rights contained in the Convention on third parties - i.e., the legal relationship among individuals - was addressed. It was suggested that further analysis and discussion of the justiciability of rights and the nature of States parties' obligations and of related mechanisms might usefully take place, including the two main procedures proposed by the Committee: a communications procedure and an inquiry procedure.

22. Several comments referred to the question of standing under an optional protocol. Note was taken with interest of the proposals put forward in that regard by the Committee in suggestion 7 which seemed to indicate a very broad approach. The examples of relevant provisions in other existing instruments on the question of standing were made. It was also suggested that further clarification and discussions of that point were necessary, including the requirement that a claimant be subject to the jurisdiction of the State party.

23. Concerning the admissibility of communications, a lack of clarity was perceived in the Committee's formulation as it pertained to the question of non-retroactivity of norms. Likewise, the formulation of the Committee's proposal regarding the exhaustion of national and international remedies and of interim measures pending examination were identified for further discussion. While the innovative proposal concerning remedies was noted, it was also mentioned that that question warranted further consideration so as to take account of the diverse nature of the obligations contained in the Convention.

24. Several comments indicated that further consideration would need to be given to the publication of the Committee's report on the results of the proceedings under an optional protocol. The question of the binding nature of the Committee's views and recommendations was raised.

25. While the proposal for an inquiry procedure was seen as an important contribution to the enforcement of the Convention, procedural questions regarding the Committee's powers to initiate an inquiry were raised.

26. A number of comments referred to the need to address the resource implications of an optional protocol and to strengthen the capacity of the Committee and of the Division for the Advancement of Women in order to implement tasks arising from an optional protocol.

III. VIEWS AND COMMENTS EXPRESSED BY GOVERNMENTS AND OTHER ENTITIES

A. General comments

1. Views on an optional protocol

27. Australia expressed its support for the development of an optional protocol to the Convention which it thought would improve the complaints procedures available to deal with issues involving the violation of the human rights of women. Liechtenstein stated that it was to become a State party to the Convention before the end of 1995 and welcomed the process initiated by the Commission concerning the elaboration of an optional protocol. Colombia found the suggestion put forward at the World Conference on Human Rights in 1993 - that the Commission and the Committee should quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention - to be very positive. Ecuador expressed its support for the Council resolution on suggestion 7 of the Committee. Turkey considered in a positive way the preparation of an additional optional protocol to the Convention. Austria, bearing in mind paragraph 40 of the Vienna Declaration and Programme for Action, welcomed the procedure set out in Council resolution 1995/29 with the aim of elaborating a draft optional protocol. It supported the introduction of a right of petition in form of an optional protocol to the Convention and welcomed the ideas put forward in suggestion 7.

28. The Netherlands was convinced that the Committee on the Elimination of Discrimination against Women should be empowered to receive and investigate complaints. The addition of an optional protocol would make that possible. It noted that an attempt to draft such a protocol was made in Maastricht in September 1994 during a meeting of independent experts. It stated that it would in the near future make every effort to ensure that the international community consider the approval of an optional protocol along the lines set out in the Maastricht proposal. The Netherlands emphasized that the existence of an optional protocol did not mean that the importance of the reporting procedure should not be recognized in full and that the introduction of such a protocol should not adversely affect the other activities of the Committee. The Division for the Advancement of Women, Department for Policy Coordination and Sustainable Development of the United Nations Secretariat, should be well prepared for any such expansion of the duties of the Committee.

29. Finland stated that it had supported and continued to support the drafting of an optional protocol to the Convention. Peru welcomed the preparation of an optional protocol because it believed that such a protocol would contribute to achieving the goals of the Convention. Norway strongly supported the process initiated by the Commission on the Status of Women with a view to elaborating a draft optional protocol. It was convinced that the mechanisms foreseen in the draft optional protocol were feasible. New Zealand stated that the possible development of an optional protocol to the Convention was an important issue which warranted careful consideration.

30. Germany had not completed its opinion-forming process on whether it was feasible and actually possible to draft an optional protocol to the Convention.

Nevertheless, Germany wished to put up for consideration a number of points which it perceived as posing serious problems and/or hindering the elaboration of an optional protocol. Its stance complied with that of the Beijing Platform for Action which, in its paragraph 230 (k) also referred to the feasibility of such an undertaking.

31. Japan noted that the possibility of establishing an optional protocol to the Convention should be examined carefully, taking into account existing mechanisms and the ongoing consideration of such mechanisms. If an optional protocol were drafted to promote the status of women, it should be formulated in such a way that it would be accepted and therefore ratified, approved or acceded to by as many States parties as possible.

2. Reasons provided in explanation of support and of issues

32. Australia considered that the development of an optional protocol to the Convention would promote the effectiveness of the Convention by addressing weakness in the monitoring and enforcement mechanisms of the Convention. Australia noted that it was important, however, for an optional protocol not to work against efforts to have issues concerning the human rights of women dealt with more effectively by mainstream human rights bodies. It stated that the Human Rights Committee should continue to investigate complaints submitted by women claiming that their human rights had been violated.

33. In expressing its full support for the relevant recommendations of the World Conference on Human Rights and the Fourth World Conference on Women, the Netherlands stated that a right of petition could make an important contribution to the interpretation and practical application of the Convention. Furthermore, with the introduction of an optional protocol, the Convention would then be placed on an equal footing with other human rights conventions that embodied a right of petition, such as the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, and the Convention against Torture. The addition of a communications procedure was seen as crucial if women all over the world were to be afforded the opportunity of seeking redress for violations of their human rights.

34. Mexico was convinced that the establishment of an individual complaints procedure under the Women's Convention would strengthen the promotion and protection of women's rights recognized under the Convention. It considered the elements contained in suggestion 7 an important basis for initiating the preparatory work for a possible optional protocol and for the elaboration of the procedure for communications which such an instrument would need to put forward for cases of violations of rights contained in the Convention or where a State party did not comply with its obligations under the Convention.

35. Peru noted that a major study on an optional protocol would seem to be useful, similar to the analysis that must be presented to the national Congress in all cases of an international nature in the field of human rights, and which, according to the Constitution, required the approval of the legislature.

36. Germany pointed out that a problem would seem to arise from the fact that the members of the Committee were not lawyers. Shifting the responsibility for examination to a "legal service" seemed to be of doubtful value when it came to ensuring effective legal protection, apart from the statutory expenses thus incurred, which would have to be made up for by cutbacks in other areas.

3. Relationship with existing international procedures

37. Australia noted that there was possible overlap between the operation of an optional protocol under the Convention and the First Optional Protocol to the International Covenant on Civil and Political Rights, concerning discrimination on the basis of sex. Consideration would need to be given to minimizing potential normative conflict and inconsistency between the Committees.

38. Mexico stated the need to discuss further how to avoid unnecessary duplication with other existing communications mechanisms. In particular, the ability of the Commission on the Status of Women to receive communications needed to be taken into account.

39. Austria suggested that existing elements in established human rights instruments be taken into consideration - in particular, the Optional Protocol to the International Covenant on Civil and Political Rights, and relevant practice.

40. Germany noted that where individual regulations coincided with, inter alia, the International Covenant on Civil and Political Rights and the European Convention on the Protection of Human Rights and Fundamental Freedoms, the mutual relation between the provisions must be clarified and examined.

41. Japan noted that the Convention prescribed recognition, enjoyment or exercise by women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The existing petition mechanisms were available only for the protection of civil and political rights. In addition, note should be taken of the fact that the Committee on Economic, Social and Cultural Rights had been considering the possibility of drafting an optional protocol to its Covenant, in order to establish a petition system.

42. New Zealand recognized the positive part which such an instrument could have in promoting States' compliance with the provisions of international human rights instruments. It had supported efforts to strengthen international human rights machinery, and although it was conscious of the limitations of an already overburdened system, it was anxious to find effective ways of addressing violations of the human rights of women. In its generic comments on the feasibility of an optional protocol which applied equally to other proposed human rights instruments, New Zealand was aware that there were existing avenues intended to protect the rights of women, although the efficacy of those procedures had been questioned. The existence, for example, of such instruments and procedures was not widely known nor were they fully utilized by women. Among them was the communications procedure of the Commission on the Status of Women, the International Covenant on Civil and Political Rights, and the 1503 Procedure. New Zealand noted that consideration was also being given to

the question of developing an optional protocol under the International Covenant on Economic, Social and Cultural Rights. New Zealand would welcome an analysis of the degree to which those and other existing instruments and procedures were able effectively to address violations of the human rights of women, before adopting any new human rights instrument. Care should be taken to avoid duplication, with a view to streamlining the mechanisms available for redress under existing and proposed instruments while at the same time ensuring that any new instrument enhanced existing procedures.

43. Finland noted that the complaints about the defective application of the Convention or about the violation of women's human rights were submitted to the Commission on the Status of Women for examination. Then the representatives of Governments on the Commission had handled the cases. Finland stated that it was clear that the members of the Commission on the Status of Women could not be regarded as independent experts. Nevertheless, such a condition was a requirement for members in many quasi-judicial United Nations organs, such as the Committee established on the basis of the Covenant on Civil and Political Rights. When creating specific monitoring procedures, a central guarantee of protection of law was that an independent expert committee was responsible for surveillance. The observance of that requirement was particularly important in the context of international surveillance of human rights, which was based on the procedure of individual petition.

44. Colombia, while noting in general the major provisions contained in the 1503 Procedure, by which the Council established procedures for the submission of communications, and of human rights instruments, such as the Optional Protocol under the International Covenant on Civil and Political Rights, pointed out that certain important aspects were omitted from those procedures.

4. The nature of rights contained in the Convention and the question of justiciability

45. Australia noted that the obligations imposed upon or accepted by States Parties to the Convention were complex and variable. It asked whether those obligations were of a type that might form the basis of an enforceable system of individual rights. It believed there was a need to consider in more detail the nature and types of obligations imposed by the Convention, particularly from the perspective of determining whether they were capable of investigation and adjudication via a complaints and inquiry procedure. It recommended that consideration should also be given to the means to address any perceived problems in that regard.

46. Finland stated that the starting-point of the elements suggested by the Committee was that the appeal and examination procedure would concern all material provisions of the Convention. It went on to state that those provisions, however, had been drawn up in a way which made it problematic to refer to them directly in order to secure the rights. Most of the articles had been formulated into political targets so that the States parties had wide freedom of action on the form of securing the rights. Finland indicated that the nature of the provisions of the Convention would determine what kind of surveillance mechanism could be created for them. Therefore it must be

determined which provisions were suitable as the object of a juridical examination in a procedure of individual petition and were, consequently, justiciable. The inquiry procedure might be possible also with regard to such rights which by their nature were not suitable for the procedure of individual petition. The optional protocol to be elaborated might, as was evident from the principles adopted by the Committee, include elements from both approaches. The principles adopted by the Committee on the forms to be followed in the procedure of individual petition and the inquiry procedure could also be the basis for discussion and development in that work when strengthening various aspects of the feasibility of the optional protocol in question.

47. Finland went on to state that, on the other hand, the relevant principles contained certain points whose acceptability or suitability in the optional protocol was not self-evident. It was not necessary to include a certain portion of those points in the protocol or even in the rules of procedure, whereas some of them were provisions which were normally provided for in the above-mentioned document.

48. New Zealand noted that the obligations in the Convention were of both a civil and political and of an economic, social and cultural nature. It also noted that there were different categories of obligations outlined in the Convention. Care should be taken to ensure that, whatever mechanisms and remedies were proposed, they should take into account the varying nature and category of obligations in the Convention. New Zealand went on to state that full consideration of the provisions of the Convention indicated that there were at least five different categories of obligation in the provisions of the Convention, as follows:

(a) Outright obligations on States parties: "to refrain from engaging in any act or practice of discrimination against women", as stated in article 2 (d) and similarly phrased in articles 2 (g), 6, 9.1, 9.2, 11.3, 14.1, 15.1, 15.2, 15.4, 16.2 and 24;

(b) A mix of outright obligations and obligations to undertake appropriate measures: "to eliminate discrimination against women in the political and public life of the country and in particular ... ensure to women, on equal terms with men, the right (a) to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies", as stated in article 7 (a)-7 (c) and similarly phrased in articles 11 (a)-11 (f) and 13 (a)-13 (c);

(c) Obligations to undertake certain activities: "to pursue by all appropriate means and without delay a policy of eliminating discrimination against women", as stated in article 2 and similarly phrased in articles 2 (a)-2 (c), 7, 10, 10 (a)-10 (b), 10 (d)-10 (e), 10 (g)-10 (h) and 11.2 (a)-11.2 (d);

(d) Undertakings to take appropriate measures: "to eliminate discrimination against women by any person, organization or enterprise", as stated in article 2 (e) and similarly phrased in articles 2 (c), 2 (f), 5 (b), 8 10 (f), 12.1, 12.2 and 14.2;

(e) Undertakings to change perceptions: "to modify the social and cultural patterns of conduct of men and women", as stated in article 5 (a) and similarly phrased in article 10 (c).

49. New Zealand, while appreciating that jurisprudence on any issue develops over time, would see value, prior to the adoption of an optional protocol, in further analysis of how the justiciability of the provisions of the Convention might affect the feasibility of a right of petition. In that regard, New Zealand commended the excellent work being undertaken by the Committee in providing interpretive observations on each of the substantive articles and encouraged it to complete its work in that area as soon as possible.

50. Japan noted that the Convention imposed on States Parties the obligation "to undertake all appropriate measures" to eliminate discrimination against women in various fields, but it did not specify in each provision the extent to which States Parties were obliged to do so. Regarding the admissibility of communications, suggestion 7 mentioned that a communication "should disclose an alleged violation of rights or an alleged failure of a State party to give effect to obligations under the Convention". In that connection, it should be pointed out that it was almost impossible for the Committee to determine whether States parties were complying with certain obligations, such as the obligation to take all appropriate measures to modify the social and cultural patterns of conduct of men and women (art. 5 (a)).

51. Germany noted that the Convention did not specify concrete rights but incorporated a wide array of programmatic obligations assumed by States parties in myriad areas, with States parties enjoying the resulting freedom to devise their individual ways of attaining the objectives stipulated. To exemplify that problem, Germany referred to article 2 of the Convention.

52. Germany went on to state that an individual complaints procedure would, on the other hand, provide for judicial and/or quasi-judicial procedures, facilitating, inter alia, the enforcement of rights to participation. That would entail incalculable consequences in terms of international law and economic, financial and social policy. In so far as part III of the Convention might be regarded as a series of guarantees which could imply rights to participation, attention must be drawn to the fact that the rights to participation were covered by numerous specific conventions with supervisory mechanisms of their own, so that there was no need to regulate that matter. Germany did not see how an individual complaints procedure which, by its nature, referred to individual rights, might be elaborated in addition to the monitoring mechanisms under article 17 and subsequent articles that were already provided for in the Convention.

53. Germany noted moreover, that reservations arose from the problem of the impact of those guarantees on third parties - i.e., on the legal relationship between individuals. The Convention was geared to have such an effect, as can be seen, for example, in articles 2 (e), 10 (e), 11, and 14 (e). Binding decisions of a quasi-judicial body might extensively encroach upon the autonomy in contracts and entail financial burdens on private persons.

5. General comments received from non-governmental organizations

54. All submissions received from non-governmental organizations expressed support for the elaboration of an optional protocol. Several pointed out that such a protocol would provide women with a new mechanism for protecting their rights and would open up opportunities for women to seek remedies for violations of their rights, and guarantees of their rights, at the international level. It was pointed out that, although domestic compliance was the most effective way to see international human rights observed, internationally enforceable law was a powerful incentive for Governments to live up to those obligations. While stressing that an optional protocol should contain the elements contained in suggestion 7, a number of non-governmental organizations called on the Commission on the Status of Women to take as a starting-point for its discussion the draft optional protocol adopted by the independent expert group in Maastricht.

55. Several non-governmental organizations stressed the necessity of ensuring implementation of the provisions of the Convention by introducing the right to petition. They stated that an optional protocol would strengthen Governments' commitment to the implementation of the Convention. It would also compensate for the inadequacy or non-existence of national or regional mechanisms of redress and remedy, and would allow women to secure the enjoyment of their human rights. An optional protocol would be a deterrent to State-sanctioned human rights violations. It would encourage Governments to resolve matters domestically and create incentives for them to reform their laws and practices in accordance with international standards and to comply with obligations under the Convention.

56. A number of non-governmental organizations stressed that an optional protocol would strengthen implementation of the Convention by making the rights contained in it, where ratified, justiciable, and reflect their status as autonomous and fundamental to the advancement of women. It would be an invaluable method for developing international jurisprudence on equality and provide more detailed guidance as to the content of the norms stated in the Convention. An optional protocol would lead to the interpretation of the Convention's provisions through practical application to specific cases and the development of precedents. An optional protocol, covering all the substantive provisions of the Convention, would be an essential tool to increase the Convention's practical effectiveness. It was considered a means by which substantive standards could be applied and where binding decisions could be reached.

57. Certain non-governmental organizations pointed out that an optional protocol would put the Convention on an equal footing with other international human rights instruments endowed with rights of petition, such as the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, and would allow redress of individual grievances. Potentially, it could correct women's under-usage of international human rights mechanisms. It was pointed out that there were currently no United Nations procedures focused

specifically on women's human rights which addressed individual cases or widespread violations with a view to providing redress. Furthermore, it would help to integrate women's human rights into mainstream human rights mechanisms by allowing other human rights bodies to refer to the Committee's views and jurisprudence under an optional protocol for detailed analysis of the nature and scope of specific aspects of gender discrimination.

58. A number of non-governmental organizations stated that an optional protocol would serve to create broader public awareness about women's human rights, the Convention, and human rights education, and thus have a positive educative effect.

59. Several non-governmental organizations stressed that the validation of the reporting procedure through an optional protocol was the next essential stage. Further interpretation and practical application of the Convention would sustain the vitality of international cooperation. It would be a signal for the importance attached to the elimination of gender-based discrimination through practical means and a critical element for increasing the enforcement of international human rights treaties. Lack of national accountability under the Convention could also be addressed, and the role of the Committee on the Elimination of Discrimination against Women as a mediating body between Governments and complainants would be reinforced.

60. A few non-governmental organizations also pointed out that an optional protocol should apply to all the substantive articles (1-16) of the Convention. In that regard it was noted that the justiciability of many provisions of the Convention was clearly established, including those stated as guarantees of equality or non-discrimination. Guarantees of equality and non-discrimination had been accepted as justiciable in relation to both civil and political rights and economic, social and cultural rights as shown in the cases of the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. Even those which were formulated only as duties to take appropriate measures to achieve a general goal could be subject to interpretation by the Committee, since it should be possible to identify minimum core obligations under such provisions. Any determination of non-justiciability should rest with the Committee, rather than excluding a priori any of the substantive provisions from the purview of the protocol.

B. Comments received regarding the elements of an optional protocol, as contained in suggestion 7 12/

"5. States parties to the Convention should have the option to ratify or accede to the optional protocol. 'State party' in this section means one that has ratified or acceded to the optional protocol."

61. Ukraine pointed out that it was necessary to reflect the procedure for signing and ratifying the optional protocol. Therefore, after the term "State", the text should specify "which has signed and ratified the optional protocol".

62. A few non-governmental organizations commented that no State could be required to ratify the protocol. It would indeed be optional. It would be applicable only to States that were already States parties to the Convention and chose to ratify or accede to the optional protocol. No additional obligations would be imposed upon States parties to the Convention which chose not to ratify the protocol.

> "6. Two procedures should be envisaged: a communications procedure and an inquiry procedure."

63. While non-governmental organizations expressed their strong support for the adoption of an optional protocol per se, many specified their support for both an individual and an inquiry procedure. It was also recommended that States ratifying a protocol should not be permitted to opt out of one of the procedures.

> "7. Communications may be submitted by an individual, group or organization suffering detriment from a violation of rights in the Convention or claiming to be directly affected by the failure of a State party to comply with its obligations under the Convention or by a person or group having a sufficient interest in the matter."

64. Australia called attention to the innovative proposal that the Committee be able to consider communications from groups and organizations. It noted that the standing proposed was broader than the standing available under the First Optional Protocol to the International Covenant on Civil and Political Rights. Australia considered that the issue of standing under an optional protocol needed further consideration and discussion.

65. Australia wished to see further elaboration on the express requirement for "detriment to be suffered" by an individual, group or organization lodging a communication. That might imply that violation of a right under the Convention was not itself a sufficient detriment to ground a cause of action. Inclusion of that express requirement might operate to exclude consideration of systemic discrimination.

66. The fact that the right of petition was not restricted to individuals was welcomed by the Netherlands. It went further than the First Optional Protocol to the International Covenant on Civil and Political Rights and article 22 of the Convention against Torture, but was in line with article 14.1 of the International Convention on the Elimination of All Forms of Racial Discrimination. The broad definition of those entitled to submit a communication, which avoided the word "victim", was also a positive development.

67. Finland noted that the personal scope of the right of appeal required further consideration.

68. Mexico noted that the right of petition - i.e., to submit communications - should be limited to individuals or to persons having suffered an injury because of a violation of the rights contained in the Convention or to a person or persons who considered themselves to be directly affected by lack of compliance

by the State party with the provisions of the Convention. The person or persons thus affected must be subject to the jurisdiction of the said State party.

69. Colombia believed that the proposed protocol must include the requirement that the person or group of persons who directed a complaint alleging to be victims of a violation of rights in the Convention by a State party must be under the jurisdiction of that State party. Colombia further believed that only natural persons could have human rights, and not juridical persons. For that reason, one could not speak of violations of the rights of organizations, as was suggested.

70. Japan stated that eligibility to submit communications should be limited to individuals who claimed to be victims of a violation by a State party of the rights in the Convention, following the example set by the First Optional Protocol under the International Covenant on Civil and Political Rights, if an optional protocol was to be drafted. Therefore, the Committee should not receive any communication from an individual, group or organization who claimed to be directly affected by the failure of a State party to comply with its obligations under the Convention or from a person or group who had a sufficient interest in the matter.

71. Many non-governmental organizations provided comments regarding this element. They expressed their strong support for broad standing criteria in an optional protocol. In particular, they pointed out that standing should be granted both to individuals and to groups and organizations alleging detriment or having suffered directly. That would first of all allow non-governmental organizations and others to represent the interests of victimized groups or individuals who might face danger of persecution, personal reprisal or social stigmatization if pursuing claims themselves and would be in line with practice established in other procedures. That was especially important where the majority of women were poor, illiterate and/or not aware of their rights. A number of non-governmental organizations stated that women often had insufficient resources to proceed alone. Individual complaints might be difficult because of the intimidating nature of official procedures, and the support of a group might be the deciding factor in pursuing a complaint.

72. Furthermore, non-governmental organizations stated that the possibility for group complaints was necessary because, as far as certain violations were concerned, it was more common for a group of women to be affected by the same event or the same perpetrator. Group complaints were essential since they would permit petitions by organizations on behalf of other women, especially in cases where victims would be endangered. Among the examples mentioned were refugee women, women victims of trafficking, or violence in the family.

73. In addition, some non-governmental organizations suggested that they and groups with a sufficient i terest in the protection of women's equality and in the Convention should have standing in the proceedings so that they could actively cooperate with the Committee in providing evidence and information regarding a Government's violations of the Convention. Also, certain matters might be better served by a class action approach which could potentially improve the lot of an indefinite number of victims.

74. It was also suggested that an optional protocol must be applicable to both actions by a Government and to a Government's failure to act against violations carried out by private persons, groups or organizations.

"8. Communications would be in writing and confidential."

75. Australia stated that it would be important to ensure that the communications procedure did not indirectly discriminate against or disenfranchise individuals or groups. It noted that the element specified that the Committee would accept written communications only. While recognizing that a written complaint was likely to be most easily dealt with by the Committee and by States parties, Australia considered that the procedure could be deemed discriminatory against women who had low levels of print literacy. Consideration should be given to providing for a range of alternative modes of communication.

76. Australia also stated that the issue of confidentiality needed to be considered in the context of the rules and procedures of the Committee. In accordance with current practices, although there were good reasons for preserving confidentiality at various stages of the communications procedure, further consideration should be given to the circumstances in which there should be a discretion to waive confidentiality.

"9. The admissibility of a communication would be subject to the following:

"(a) The communication would be inadmissible if a State party to the Convention had not ratified or acceded to the optional protocol;

"(b) It should not be anonymous;

"(c) It should disclose an alleged violation of rights or an alleged failure of a State party to give effect to obligations under the Convention;

"(d) It should relate to acts or omissions that occurred after the State party ratified or acceded to the Convention, unless the violation or failure to give effect to those obligations or the impact continued after the protocol took effect for that State party."

77. Ukraine stated the need to specify "as a State party that has signed and ratified the Convention".

78. The Netherlands stated that it was not clear whether the element meant that communications relating to violations that took place before the optional protocol came into effect in the State which was the subject of the complaint would be declared inadmissible. If that were the case, it would seem better to base the right of petition on the date on which the Convention, and not the protocol, came into force, since accession to the protocol changed nothing with regard to the obligations of States parties under the Convention.

79. Colombia saw a lack of clarity in the element. The principle of non-retroactivity of norms must be upheld and, as a consequence, it must be established that a communication must refer to an act or omission that took place after the optional protocol entered into force in the respective State party.

> "9. The admissibility of a communication would be subject to the following:
>
> "... (e) It should not be an abuse of the right to submit a communication."

80. Colombia stated that a further prerequisite for admissibility should be that a communication not contain offensive or insulting language directed at the State against which the communication is lodged.

> "9. The admissibility of a communication would be subject to the following:
>
> "... (f) A communication would be declared inadmissible by the Committee if all domestic remedies had not been exhausted, unless the Committee considered that requirement unreasonable. If the same matter was being examined under another international procedure, the Committee would declare the communication inadmissible unless it considered that procedure unreasonably prolonged".

81. Finland noted that the question of the exhaustion of national and international legal remedies required further consideration.

82. New Zealand would welcome further debate on the matter: it welcomed the provision of inadmissibility if the same matter was being considered under another international procedure. Such a provision would go some considerable way to meeting New Zealand's desire for streamlined processes and non-duplication of efforts.

83. Mexico noted that, contrary to what was suggested in terms of inadmissibility in the second sentence, one of the causes for inadmissibility for communications must always be that the matter was being examined by another international procedure, no matter how long that procedure took. Mexico also believed that further discussion and analysis were needed regarding the criteria that would be used to decide whether exhaustion of domestic remedies was "not reasonable" and how the determination of their exhaustion would be made.

84. Colombia stated that, with regard to the first sentence, it would be clearer to state that communications were inadmissible if available domestic remedies had not been exhausted, except in cases where it had been shown convincingly that such remedies were inefficient or that they were being unjustifiably prolonged. Regarding the second sentence of point (f), Colombia noted that the formulation would give the Committee the ability to judge the efficiency and efficacy of other organs established under treaties, which would be unprecedented and very undesirable. Instead, it would be advisable to avoid duplication of existing procedures, by simply stating that a communication was

inadmissible when the same matter was under consideration by another international procedure.

85. A few non-governmental organizations stated that the Convention did not respond adequately when domestic remedies were limited or non-existent, and an optional protocol would allow redress when women were not able to achieve it domestically. Likewise, the optional protocol should make it clear that the requirement of exhaustion of domestic remedies could be waived in cases in which the remedy sought was unavailable or ineffective, unduly prolonged or did not include due process protections, or where access to domestic remedies had been denied. Those exceptions were well established in the jurisprudence of United Nations human rights bodies. In such cases, an optional protocol would become an important fall-back mechanism to address women's rights.

86. It was suggested that the reasonable requirement of the exhaustion of domestic remedies should not obstruct the filing of claims but rather enable States parties that provided effective domestic remedies to address a complaint before it reached the international level. In turn, the eventuality of an international review enhanced the possibility that those complaints would be taken seriously. Thus, an optional protocol would advance the principle and practice of accountability on a domestic as well as international level.

> "9. The admissibility of a communication would be subject to the following:
>
> "...(g) The communication would be inadmissible if the author, within a reasonable period, failed to provide adequate substantiating information.
>
> "10. Pending examination of a communication, the Committee should have the right to request that the status quo be preserved, and a State party should give an undertaking to that effect, in order to avoid irreparable harm. Such a request should be accompanied by information confirming that no inference could be drawn that the Committee had determined the merits of the communication."

87. New Zealand noted that element 10 proposed an innovation unprecedented in international human rights instruments: the right of the Committee to request that "the status quo be preserved ... in order to avoid irreparable harm" during consideration of a communication. As the intention of such a provision was unclear, further discussion on the issue might be warranted.

88. Colombia noted lack of clarity in the drafting of element 10. The proposal that the Committee had the right to request that the status quo be maintained seemed to suggest that the alleged violation should be maintained. Therefore, the words <u>que no hay indicios de que</u> should be deleted.

> "11. While the State party would be informed confidentially of the nature of the communication, the author's identity would not be revealed without that person's consent. The State party would, within a specified period, provide replies or information about any remedy. While the process of examination continued, the Committee would work in cooperation with the

parties to facilitate a settlement which, if reached, would be contained in a confidential report of the Committee."

89. The Netherlands stated that there must be scope for publicizing the results of the settlement with the agreement of the interested parties.

90. Mexico stated that communications must, without exception, be brought to the attention of the State party that was alleged of a violation of, or lack of compliance with, a provision of the Convention, even if that was done confidentially and with the necessary safeguards for the security of the person or persons who had brought the complaint.

91. Colombia noted, with regard to element 11, the need to ask in which specific cases the Committee would, without having concluded the proceedings, work with the parties to facilitate a settlement, given that that in fact would mean acceptance that a violation existed. Colombia further noted the importance of ensuring the right of the State party to be represented at those sessions of the Committee in which it dealt with cases in which the said State party had an interest. That was the case in similar situations in, inter alia, the committees established under the Covenant on Civil and Political Rights and the Convention on the Elimination of Racial Discrimination.

92. Certain non-governmental organizations noted that any provision authorizing the Committee to facilitate a settlement should stipulate that the settlement must be on the basis of respect for the rights and obligations set forth in the Convention, to guard against the possibility that a complainant might be intimidated or coerced to agree to a settlement.

"12. The Committee would examine communications in the light of all information provided by the State party, or by the author or received from other relevant sources. All such information would be transmitted to the parties for comment. The Committee would set its procedures, hold closed meetings when examining communications and, as a whole Committee, adopt and transmit views and any recommendations to the parties. While examining a communication, the Committee might, with the agreement of the State party concerned, visit its territory."

93. Colombia pointed out that it would be logical for the Economic and Social Council, with its vast experience in the field of human rights and with the goal of maintaining necessary consistency, to establish the procedure. That would not prevent the Committee from establishing its own rules of procedure.

94. Japan noted that the Committee would examine a communication in the light of all information provided by the State party concerned and the author of the communication, but not in the light of information received from other relevant sources. In examining information thus provided, due respect should be given to the facts established through due process of law.

95. A few non-governmental organizations stated that the procedures available to the Committee for examining responses must include the ability to take oral or written evidence, on-site visits, and urgent measures requesting interim action to prevent irreparable harm.

"13. When the whole Committee considered that the communication had been justified, it might recommend remedial measures or measures designed to give effect to obligations under the Convention. The State party would remedy violations and implement recommendations. It would also ensure that an appropriate remedy (which might include adequate reparation) was provided. It would also provide the Committee within a set period with details of the remedial measures taken."

96. New Zealand noted that the element proposed that appropriate remedies, which might include adequate reparation, could be provided and that that aspect of the proposal warranted further consideration. If provision were to be made for reparations, there was need for further interpretative work on the obligations of States parties under the Convention. New Zealand supported the work that the Committee had already done in preparing interpretative observations. However, further work in regard to remedies might be required to take into account the diverse nature of obligations contained in the Convention - for example, by providing for a range of remedies consistent with the nature of those obligations.

97. New Zealand commended the Committee for the innovative measure it proposed for possible inclusion in an optional protocol - in particular, in element 13 which suggested that a State party would provide the Committee with details of remedial measures taken to implement the recommendations on a communication issued by the Committee. New Zealand saw that proposal as providing constructive practical measures for the implementation of the optional protocol.

98. Some non-governmental organizations noted that remedial measures might include the reform or repeal of national legislation, payment of damages or provision of other forms of reparation, or steps to prevent future violations, such as reform of administrative procedures, similar to the practice of the Human Rights Committee.

99. Japan noted that a petition procedure under an optional protocol might infringe upon the independence of the judicial systems of States parties. In preparing an optional protocol to the Convention it was necessary to recognize that the views and recommendations of the Committee, which should be of a general nature, should not be legally binding on the States parties and that it should be up to each State party whether to take measures.

"14. The Committee should have the power to initiate and continue discussions concerning such measures and remedies and have the power to invite the State party to include such information in its reports under article 18 of the Convention."

100. A few non-governmental organizations commented that the procedure must provide for the adoption of views by the Committee and its powers to make recommendations, including discussions with the State party of the remedial measures taken, as well as the requirement of including relevant information in the reports under article 18 of the Convention.

"15. The Committee would, in its confidential report, summarize the nature of communications received, its examination of them, the replies and

statements of the States parties concerned and its views and recommendations."

101. The Netherlands stated that, according to the Maastricht draft optional protocol, the report would not be entirely confidential. Article 9.3 of the Maastricht draft optional protocol states: "The Committee shall include in its annual report an account of the substance of the communication and its examination of the matter, a summary of the explanations and statements of the State party concerned, of its own views and recommendations, and the response of the State party concerned to those views and recommendations." 13/ That could take place in consultation with the parties concerned.

102. Finland noted that the question of the publicity of the decisions required further consideration.

103. A few non-governmental organizations pointed out that an optional protocol should call on States parties to publicize the protocol and its procedures and the Committee's views and any recommendations concerning a communication received or an inquiry conducted.

"16. The Committee would have the power to delegate to a working group its responsibilities under this section. The working group would report to the Committee and the Committee alone would have the power to adopt views and make recommendations."

104. Ukraine noted that the procedure for establishing the working groups needed to be specified.

105. A few non-governmental organizations noted that the Committee would adopt a decision on the merits and issue a declaratory judgement to the effect that the country was or was not in violation of its obligations under the Convention. If a violation was found, it should establish appropriate remedies, and notify the relevant State of its findings. The Government would be obligated to take all necessary steps to implement any specific remedy and to report back on measures taken to comply with the Committee's decision. Requiring governmental response would substantially increase accountability for violations of women's rights.

"17. If the Committee received reliable information indicating a serious or systematic violation by a State party of rights under the Convention or of a failure to give effect to its Convention obligations, the Committee should have the right to invite that State party to cooperate in examining the information and in submitting observations on it. After considering those observations and any other relevant information, the Committee should have the power to designate one or more of its members to conduct an inquiry and report urgently to the Committee."

106. The Netherlands was of the opinion that the fact that such a procedure was being drafted constituted an important contribution to the enforcement of the Convention. In terms of United Nations conventions it was a relatively new procedure. Its adoption in a protocol would provide a suitable incentive for other bodies to follow the example of the Committee.

107. New Zealand noted the proposal of an inquiry procedure undertaken with the cooperation of the State party. It stated that the inquiry procedure was very similar to that which already existed under the 1503 Procedure. New Zealand would welcome further discussion on the possible duplication between the two procedures, including duplication in regard to the distinction made between gross violations of human rights and fundamental freedoms as contained in the 1503 Procedure and systematic violations and breaches as referred to in element 17.

108. With regard to a possible inquiry procedure, Mexico considered that such a procedure could be initiated exclusively on the basis of a communication, and as such, must follow the same requirements and procedures envisaged for the complaints procedure. Mexico furthermore saw a need for further analysis concerning the modes of financing of the activities which the Committee would be undertaking and which would determine whether the inquiry procedure proposed in points 17 and 18 would be included.

109. Japan noted that the Convention against Torture had institutionalized a procedure under which the Committee concerned might proceed with an inquiry if it received reliable information which appeared to contain well-founded indications that torture was being systematically practised (art. 20). Suggestion 7 envisaged that the Committee might initiate an inquiry if it received reliable information indicating a serious or systematic violation by a State party of rights under the Convention or failure to give effect to its Convention obligations. In that connection, two questions should be raised if an optional protocol were to be drafted: whether it was appropriate for the Committee to initiate an inquiry procedure; and if so, whether it was appropriate to establish as criteria for taking such action that a violation be "systematic" and/or that it be "serious", in light of the fact that the latter had not been used in connection with the existing international human rights treaty petition procedures. Those questions should be examined thoroughly.

110. A large number of non-governmental organizations stressed the need to include an inquiry procedure in the proposed optional protocol. Such a procedure would not duplicate the reporting procedure established under article 18 of the Convention. They stressed that the Committee should have the authority, on its own initiative and unhampered by political and other considerations, to examine any allegations concerning serious or systematic violations of the articles of the Convention. While requiring a high threshold for initiating its use, as indicated by the phrase "serious or systematic", without it, the Committee would have to ignore evidence of serious or systematic violations that did not result in a formal complaint. The inquiry procedure would facilitate the examination of widespread violations, such as Fatwa-related violence, violations that crossed national borders and implicated several Governments, such as trafficking, or violence against women in conflict situations. It was suggested that the inquiry procedure should be based on the precedent of article 20 of the Convention against Torture. Broader inquiries could also have an educational effect in bringing to light violations and/or neglect by States of particular practices.

> "18. Such an inquiry would be conducted with the cooperation of the State party and might, with its agreement, include a visit to its territory."

111. Some non-governmental organizations stated that, while seeking the cooperation of the Government(s) concerned, the Committee should continue to investigate even if a Government did not cooperate. The need for the Committee to have power to conduct on-site investigations and to publish a report at the conclusion of its investigation was stressed.

"19. Following the examination of the findings, which would be transmitted to the State party, the latter would have a set period in which to make observations in response."

112. New Zealand commended the Committee for the innovative proposal that allowed Governments a set period in which to submit observations.

"20. The inquiry would be conducted confidentially and at all stages with the cooperation of the States parties.

"21. The Committee would encourage the State party to discuss the steps taken by it as a consequence of the inquiry. Those discussions might be continued until a satisfactory outcome was achieved. The Committee might ask the State party to report on its response to the inquiry in its report under article 18 of the Convention."

113. Some non-governmental organizations stated that, after releasing its finding, the Committee should continue to monitor the situation and request updates from Governments.

"22. After completing all those steps, the Committee would be empowered to publish a report."

114. The Netherlands stated that it was unclear whether the element could be acted upon against the will of the State concerned. If that was s the Committee must be able to impose sanctions on States that refused to attach any consequences to the outcome of the inquiry.

"23. When ratifying or acceding to the optional protocol the State party would undertake to assist the Committee in its inquiries and to prevent any obstacles to, or victimization of, any person who provides the Committee with information or assists it in its inquiries."

115. New Zealand commended the Committee for the innovative proposal regarding the proposed safeguards indicated in the element.

116. Certain non-governmental organizations noted that the element would broaden the duty of cooperation which appeared in other human rights instruments by encompassing the duty to protect against victimization not only by the State itself but also by private individuals. As illustrated by the example of violence against women in the family, only the State was in a position to prevent such victimization.

"24. States parties would publicize the protocol and its procedures, the Committee's views and any recommendations concerning a communication received or inquiry conducted.

"25. The Committee would develop rules and procedures that would enable it to conduct its work fairly, efficiently and, as necessary, urgently.

"26. Meeting time of not less than three weeks per annum and resources, including expert legal advice, would be made available to enable the Committee to conduct its work under the Convention."

117. New Zealand stated that the resource implications of an optional protocol need to be addressed. For some years New Zealand, along with many others, has been seriously concerned about the inadequate resources provided to the Committee to support its work. Referring to points 25 and 26, New Zealand is of the view that in order to discharge the additional responsibilities and workload which would arise from the adoption of an optional protocol, the United Nations would need to commit the necessary resources to support the Committee's work. Accordingly, New Zealand recommends the preparation of an analysis of the resource implications of an optional protocol, including recommendations for future funding, for presentation to the Commission on the Status of Women.

118. Australia notes that the effective operation of an optional protocol will depend on adequate resources being made available, including additional meeting times for the Committee for the handling of complaints.

119. Mexico sees a need to analyse further ways to strengthen the capacity of the Committee in order to enable it to assume efficiently the tasks which would arise from the implementation of the optional protocol.

120. Japan notes that once the optional protocol enters into force, additional work related to it would impose an extra burden on the Committee as well as its secretariat, the Division for the Advancement of Women. With the current budget and at the present level of human resources, they would be unable to shoulder such an extra burden. It is therefore necessary to examine carefully the financial implications and human resources requirements arising from such new mandates.

121. A few non-governmental organizations pointed out that a condition for a strong optional protocol was the provision of adequate human and financial resources for the Committee.

"27. Procedures for the signing, ratification, accession and entry into force of the protocol should be prescribed."

122. New Zealand would wish to ensure that application of relevant provisions to territories under a State's jurisdiction would take account of the unique constitutional and legal status of the self-governing territories of New Zealand. It would be pleased to assist in the drafting of appropriate language to take account of that situation in due course.

"28. No State-to-State communication procedure should be included and no reservations permitted."

123. The Netherlands supported the prohibition of reservations to the protocol.

124. A few non-governmental organizations proposed that the optional protocol could allow State-to-State complaints of non-compliance to be heard by the Committee, since States might in the future be more willing to resort to such a procedure, which therefore should not be foreclosed by omitting it from an optional protocol. The inclusion of such a procedure would reinforce the principle that human rights obligations were obligations erga omnes.

"29. Procedures for amendment and denunciation and the authentic texts of the protocol should be prescribed."

125. There were no responses to element 29.

Notes

1/ See Official Records of the General Assembly, Fiftieth Session, Supplement No. 38 (A/50/38), chap. I.B.

2/ See A/32/218 (1977), para. 151, and E/CN.6/SR.673, paras. 93-94. See also Lars Adam Rehof, Guide to the travaux préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (Dordrechet, Martinus Nijhoff Publishers, 1993).

3/ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 38 (A/47/38), para. 455 (b).

4/ Ibid., Forty-eighth Session, Supplement No. 38 (A/48/38), chap. I.A, para. 6 (b).

5/ See "Report of the World Conference on Human Rights" (A/CONF.157/24, part I), chap. III, sect. II, para. 40.

6/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 38 (A/49/38), chap. I.B.

7/ A/CONF.177/20, chap. I, annex II, sect. I, para. 230 (k).

8/ See Human Rights: Compilation of International Instruments (United Nations publication, Sales No. E.94.XIV.1), vol. I, part one.

9/ General Assembly resolution 2106 A (XX).

10/ General Assembly resolution 39/46.

11/ General Assembly resolution 45/158.

12/ Some of the elements did not receive any comment.

13/ E/C.12/1994/12.

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E

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Fortieth session
New York, 11-22 March 1996
Item 5 (b) of the provisional agenda

MONITORING THE IMPLEMENTATION OF THE NAIROBI FORWARD-LOOKING STRATEGIES FOR THE ADVANCEMENT OF WOMEN

Elaboration of a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Report of the Secretary-General

Corrigendum

In paragraph 15, replace 14 in the first line by 15. In the last line, after Ukraine, add Japan.

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MONITORING THE IMPLEMENTATION OF THE NAIROBI FORWARD-LOOKING STRATEGIES FOR THE ADVANCEMENT OF WOMEN: OTHER ISSUES

Elaboration of a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Report of the Secretary-General

Addendum

1. In accordance with Economic and Social Council resolution 1995/29 of 24 July 1995 on the elaboration of a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Secretary-General prepared a comprehensive report, including a synthesis, on the views expressed in accordance with paragraph 5 of that resolution (E/CN.6/1996/10). After the report was completed, the views of the Governments of Cuba and China were received. They are reported below.

2. Cuba observed that, in keeping with the attention and priority given to women's issues in the country, the question of introducing the right of petition through an optional protocol to the Convention was being considered by the relevant authorities of the country with a view to determining the position which Cuba would take in the working group that was to meet during the fortieth session of the Commission on the Status of Women, to be held in March 1996.

3. The Cuban Government was also giving constant attention to examining its existing mechanisms and procedures in the light of international human rights instruments, particularly those dealing with women's human rights. To that end, a comprehensive evaluation of the feasibility of an optional protocol was being made at the national level, involving a joint effort in which all institutions concerned with women's issues in Cuba were participating.

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4. Cuba also noted that, in the course of national consideration of the issue, particular attention would be paid to existing mechanisms, in order to ensure that the decisions ultimately taken made a real and substantive contribution to the handling of human rights issues without unnecessary duplication.

5. China stated that, since the Commission on the Status of Women and the Commission on Human Rights had already established special mechanisms to review communications and since the United Nations was practising thrift, another mechanism, such as an optional protocol, might cause a duplication of work and duties and a waste of human and financial resources. Those would certainly add an extra load to the United Nations heavy financial burden. The Secretary-General was requested to give serious consideration to the above-mentioned facts.

6. In accordance with resolution 1995/29 of the Economic and Social Council, the Commission on the Status of Women should establish an in-session open-ended working group at its fortieth session to consider the report of the Secretary-General with a view to elaborating a draft optional protocol to the Convention. Considering that an optional protocol would be legally binding on the States parties and should reflect their views, it was recommended that a drafting group of experts from the States parties to the Convention be set up. The composition of the drafting group should fully embody the principle of equitable and geographical representation. When the drafting group had worked out a draft optional protocol, it should distribute the draft to the States parties to solicit comments from all sides.

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ELABORATION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Report of the Secretary-General

Addendum

In accordance with Economic and Social Council resolution 1995/29 of 24 July 1995 on the elaboration of a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Secretary-General prepared a comprehensive report, including a synthesis, on the views expressed in accordance with paragraph 5 of that resolution (E/CN.6/1996/10). After the report was completed, the views of the Government of the United Kingdom were received. They are reported below.

* E/CN.6/1996/1.

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/...

1. The United Kingdom is of the opinion that the introduction of an optional protocol is not appropriate at the present time. The United Kingdom also has concerns about the proposed protocol in its present form. Notwithstanding its concerns, the United Kingdom is prepared to work together with other States parties to ensure that any protocol which may be adopted results in an effective instrument and submits its views in response to the consultation exercise in that spirit.

2. Through its scrutiny of national reports the Committee on the Elimination of Discrimination against Women already has the power to assess progress by States parties in meeting the wide-ranging provisions of the Convention. The United Kingdom recognizes the efforts made by the United Nations to secure the efficient operation of the Committee. However, it believes that at the present time an efficient Committee and the encouragement to all States parties to submit timely periodic reports are the most effective ways of enforcing provisions and reaching those women most in need of support. To proceed with an optional protocol now risks diverting United Nations focus and resources to further scrutiny of those States parties that ratify the optional protocol - in many cases likely to be among the most advanced on equality issues.

3. The United Kingdom believes that an optional protocol would add to the administrative costs of the United Nations and States parties without providing concomitant benefits to those women most in need. It seeks an analysis of the costs of implementation of an optional protocol and clarification on the apportionment of costs between States parties. On a specific point about costs: is it necessary for the optional protocol to stipulate a minimum time period in which the Committee can meet of not less than three weeks? This proposal should be reconsidered.

4. The United Kingdom is also concerned that the proposed protocol appears in some respects to be broader than optional protocols already available under, for example, the International Covenant on Civil and Political Rights. The Committee would have power to consider complaints from persons or groups having a sufficient interest in, but not directly affected by, the failure of a State party to comply with its obligations under the Convention; by contrast, the optional protocol to the Covenant permits only individuals who claim to be victims of such a violation to bring a complaint before the Committee. The United Kingdom would be grateful for clarification on this matter and the reasons for the apparently broader approach under the Convention.

5. The United Kingdom is also doubtful whether the obligations in the Convention, some of which are drafted in general terms, can be susceptible to a judicial approach. It seems likely that many of the obligations would be open to wide interpretation, rendering the outcome to any specific complaint unpredictable. The United Kingdom notes that the existing duties and powers of the Committee were those given to it at the time the substantive provisions of the Convention were adopted, and it is doubtful whether those should be extended.

6. Turning to some points of detail, in which the comments of the United Kingdom are without prejudice to its objections in principle: with regard to paragraph 9 (f) of suggestion 7, 1/ the United Kingdom would not wish to see

Committee intervention in issues which had not exhausted domestic remedies and would wish to see the phrase "unless the Committee considered that requirement unreasonable" deleted. Alternatively, the meaning of this phrase should be clarified in the protocol.

7. The United Kingdom also seeks clarification about the responsibility of the State party to redress violations (including the payment of reparations) of the Convention (paras. 7 and 13 of suggestion 7) and would hope to see that responsibility set out in a further draft of the protocol or explanatory note.

8. Finally, on issues of timing, the United Kingdom would hope to see a change in the proposal that acts or omissions before the ratification of or accession to the Convention might also be considered (para. 9 (d)). This is essentially a retrospective measure, which would run contrary to the general principles of legal practice. Furthermore, the draft does not incorporate any time-limit within which complaints must be submitted, which is likely to create a great deal of legal and administrative uncertainty. The United Kingdom would hope to see a reasonable time-limit incorporated in the protocol.

Notes

1/ Official Records of the General Assembly, Fiftieth Session, Supplement No. 38 (A/50/38), chap. I.B.